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Attention: Commissioner for Patents

Attorney Docket No PD-200153A

Please find attached Re: 09/732,498

➤ Amended Appeal Brief

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of : Derek Footer et al.
Serial No. : 09/732,498
Filed : December 6, 2000
For : **SYSTEM FOR OBTAINING DATA
REGARDING CUSTOMER USE OF
INTERACTIVE TELEVISION**
Examiner : SHELEHEDA, James R.
Art Unit : 2614
Our File No. : PD-200153A

AMENDED APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Hon. Commissioner of Patents and Trademarks
Alexandria, VA 22313-1450

Appellant submits this Amended Appeal Brief pursuant to 37 C.F.R. § 41.37(d) and in response to Notification of Non-Compliant Appeal Brief mailed on October 20, 2005.

Please charge Deposit Account 50-0383 of The DIRECTV Group, Inc. for a one month extension of time in the amount of \$120.00, and consider this a petition therefore.

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Applicant: Footer et al.
Serial No.: 09/732,498
Page 2

REAL PARTY IN INTEREST

The real party in interest is The DIRECTV Group, Inc.

RELATED APPEALS AND INTERFERENCES

Appellant's attorney is not at this time aware of any related appeals and/or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

This is an appeal from the Examiner's final rejection of claims 1-17 dated May 13, 2004. The claims on appeal, claims 1-17, are set forth in the Appendix A (pages 16 to 19). Claims 1-17 stand rejected and claims 18-24 have been cancelled without prejudice.

STATUS OF AMENDMENTS

Appellant submitted an Amendment After Final Pursuant to § 1.116 which was responsive to the Final Office Action date March 1, 2005. Per the Advisory Action of May 24, 2005 the Examiner entered the proposed amendments with an explanation of the reasons for further rejection.

Applicant: Footer et al.
Serial No.: 09/732,498
Page 3

SUMMARY OF INVENTION

The present invention relates to a system for obtaining data regarding customer use of interactive television, comprising at least one application server 110 including at least one application program 120 where the at least one application program 120 is transmitted to users via at least one broadcast center 130, see specification p. 6, lines 10-19, Figure 1; a communications satellite 140, where the communications satellite 140 receives transmissions from the at least one broadcast center 120, see specification p. 6, lines 21-23, Figure 1; a plurality of satellite dishes 150 that receive the at least one application program 120 via the communications satellite 140, where each satellite dish 150 transmits signals to a integrated receiver/decoder (IRD) 160, where the IRD 160 may transmit signals via a modem 200, see specification p. 6, line 25 through p. 7, line 2; p. 8, lines 9-10, Figure 1; at least one graphic user interface (GUI) 170 provided for each IRD 160, where the at least one GUI 170 enables users to interact with and input data to the at least one application program 120, where the IRD 160 includes callback functionality and flash memory 190, see specification p. 7, lines 3-11, 21-24; p. 8, lines 8-13; Figure 1; a data log 180 of user transactions and navigation activity, said data residing in the flash memory 190, see specification p. 7, 11-14, 21-24; Figure 1; at least one communications server 210 for receiving any callback functionality including data, see specification p. 8, lines 16-17, Figure 1; at least one interactive server 220 where the at least one interactive server 220 receives signals from the at least one communication server 210, wherein the at least one interactive server 220 encapsulates the data into an appropriate protocol for transmission and each interactive server 220 including a 333 MHz CPU or greater and 256 MB RAM or greater, see specification p.8, lines 19-23; p. 9, lines 9-12, 18-19, Figure 1; at least one interactive data repository (IDR) 240 for storing data; and a router in each interactive server 220, where each router includes a router application 230, said router application

Applicant: Footer et al.
Serial No.: 09/732,498
Page 4

230 written in Unix C or Open TV, see specification p. 9, lines 19-24, Figure 1.

The present invention further relates to a method for obtaining data regarding a customer use of interactive television, comprising the steps of: providing at least one application program 120 on application servers 110, see specification p. 6, lines 10-11, Figure 1; transmitting the at least one the application program 120 to a broadcast center 130, see specification p. 6. lines 18-19, Figure 1; transmitting the at least one application program 120 from the broadcast center 130 to a communications satellite 140, see specification p. 6. lines 21-23, Figure 1; transmitting the application program 120 from the communications satellite 140 to a plurality of satellite dishes 150, see specification p. 6, line 25 through p. 7, line 2, Figure 1; communicating the at least one application program 120 from each satellite dish 150 to at least one integrated receiver/decoders ("IRD") 160, see specification p. 6, line 25 through p. 7, line 2, Figure 1; enabling a user to input data into the at least one application program 120 received by the IRD 160 via a graphical user interface (GUI) 170, see specification p. 7. lines 3-11, Figure 1; inputting data into a data log 180 in flash memory 190 in each IRD 160, see specification p. 7. lines 21-24, Figure 1; transmitting the data log 180 via callback from each IRD 160 to a communications server 210, see specification p. 8. lines 8-13, Figure 1; transmitting the data log 180 from the communications server 210 to an interactive server 220, see specification p. 8. lines 19-23, Figure 1; parsing user navigation 370 and transaction data 380 where the transactions include gaming activity, weather requests, advertising viewed and banking transactions from the data log 180, see specification p. 14, line 17 through p. 15, line 9, Figure 4; and storing user navigation and transaction data in at least one interactive data repositories ("IDRs") 240, 420, see specification p. 16, lines 9-11, Figure 4.

Applicant: Footer et al.
Serial No.: 09/732,498
Page 5

GROUND FOR REJECTION TO BE REVIEWED ON APPEAL

Claims 1-11 and 13 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,857,190 to Brown (Brown) in view of U.S. Patent No. 6,067,107 to Travaille et al. (Travaille), U.S. Publication No. US 2003/0105845 A1 to Leermakers (Leermakers) and U.S. Patent No. 5,889,954 to Gessel (Gessel).

Claims 14-17 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown, Travaille, Leermakers and U.S. Patent No. 6,801,936 to Diwan (Diwan).

Claim 12 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown, Travaille, Leermakers and Gessel as applied to claim 11 above, and further in view of U.S. Patent No. 6,052,554 to Hendricks et al. (Hendricks).

Applicant: Footer et al.
Serial No.: 09/732,498
Page 6

ARGUMENT

A. Rejection of Claims 1-11 and 13 under 103 based upon Brown in view of Travaille,
Leermakers & Gessel
Claims 1-11 and 13 Argued as a Group

Improper Hindsight Construction

The Examiner's initial rejection under 103 of claims 1 through 11 and 13 are based upon references Brown, Travaille, Leermakers and Gessel. The Examiner asserts that the combination of these four references renders the Appellant's claimed invention obvious. Contrary to the Examiner's position, Appellant respectfully submits that the rejections set forth by the Examiner demonstrate a hindsight combination of components and, accordingly, cannot support an obviousness rejection. The determination of obviousness cannot be based upon the hindsight combination of components selectively culled from the prior art to fit the parameters of the patent invention. Crown Operation International, Ltd. v. Solutia, Inc., 289 F.3d 1367, 1376, 62 U.S.P.Q.2d 1917 (Fed. Cir. 2002).

Initially, Appellant recites claims directed toward a system for obtaining data regarding customer usage. Claim 1 sets forth a system that includes: application servers that store application programs where the application programs are transmitted from broadcast centers via communication satellites to a plurality of satellite dishes; each satellite dish then transmits signals to a integrated receiver/decoder (IRD) where in turn the IRD transmits signals via a

Applicant: Footer et al.
Serial No.: 09/732,498
Page 7

modem; a graphic user interface is provided for each IRD that enables users to interact with an input data to the application programs where the IRD includes call-back functionality and flash memory. Claim 1 includes a data log of user transactions and navigational activity residing in the flash memory of IRD wherein the data stored in the flash memory is transmitted to communication servers which transmit the data to interactive servers that encapsulate the data for storage on an interactive data repository (IDR) and the inclusion of a router in each interactive server.

Brown Reference

The Examiner initially cites to Brown for teaching a number of the elements set forth in claim 1. Brown relates to an event logging system, an interactive entertainment network system, capable of logging in a large number of and currently received events generated at the subscriber homes. The system of Brown is described as including a centralized headend interconnected via a distribution network to multiple user interface units located at subscriber homes. The Brown reference sets forth an example of a user interface unit as a TV set operably connected to and controlled by a set top box. Accordingly, individual events that may be generated and detected at the user interface unit are logged. The Examiner cites to Brown for a number of the elements that are recited in claim 1 of the present invention.

The Examiner also states that Brown fails to disclose the following: an integrated receiver/decoder (IRD) with signal transmissions via a modem; flash memory; and an interactive server that encapsulates data into appropriate protocol for transmission. The Examiner then utilizes the Travaille, Leermakers and Gessel references to support the other features that Brown

Applicant: Footer et al.
Serial No.: 09/732,498
Page 8

fails to disclose. As will be clearly explained in the following, the Examiner apparently has used the Appellant's invention as a road map in order to piece together these four references. What the Examiner has done in submitting this rejection is the Examiner has failed to show any teaching or suggestion to combine these four references in order to achieve the subject matter of the present invention. The determination of obviousness cannot be based on hindsight combination of components selectively culled from prior art to fit the parameters of patented invention. See, Crown Operation International, Ltd., at 1376.

Travaille Reference

The Examiner relies on the Travaille reference to disclose the use of flash memory. Travaille relates to an interactive broadcast system that provides for periodic reconfiguration of various broadcast receivers' ability to selectively store responses. Periodic reconfiguration adjusts priority values assigned to the different types of responses. The adjusted priority values are transmitted to the various broadcast receivers in the broadcast system. Travaille teaches the use of flash memory in the broadcast receiver to store the user responses.

Leermakers Reference

Leermakers relates to a server system that stores software applications and a broadcast system that broadcasts the software applications to a multiplicity of portable clients. The portable clients include any type of portable data communications device, such as a handheld palm top or notebook computer device, a PDA, and intelligent cellular phone or any other personal multimedia application or network computer. Leermakers teaches that the software includes applications such as work processing, video games, spreadsheets, address books,

Applicant: Footer et al.
Serial No.: 09/732,498
Page 9

calendars and the like. The Examiner cites to Leermakers for teaching the use of a modem while client users operate portable data communication devices such as PDA or handheld palms where Leermakers emphasizes the use of wireless modems in connection therewith.

Without addressing the last reference used in this combination, Gessel, Appellant would like to point out the insufficiencies related to the first three references. Although Leermakers states use in connection with a broadcast system, the primary purpose of Leermakers relates to the downloading of software onto PDAs or the like. Leermakers does not discuss or disclose any data log of transactions or navigational activity as related to the user. One point that clearly distinguishes Leermakers from the Brown and Travaille references is the software applications that are downloaded via the system. The software itself is for individual use on the associated computing device that executes the download. In particular, each user as described in the background of Leermakers would be using a device that included Java programming and functions as Java virtual machine. The broadcast transmissions described and taught in Leermakers clearly relate to the transmission of software applications via these systems and does not teach any two-way communication other than a request for the applications by the client. Leermakers fails to discuss or teach any logging of activity that may be associated with the user.

Accordingly, based on the foregoing, Leermakers would not be a reference viewed by one skilled in the art in order to achieve the subject matter of the claimed invention nor would one skilled in the art look to combine Leermakers with Brown and Travaille in order to achieve the subject matter of the present invention. Leermakers does not contain any teaching or suggestion to combine it with an event logging system as disclosed in Brown nor a periodic reconfiguration

Applicant: Footer et al.
Serial No.: 09/732,498
Page 10

system as applied to the broadcast in Travaille. Leermakers does not teach, discuss or suggest the use of any IRD, set top box or broadcast receiver. Leermakers does teach the downloading of software via a cable or wireless application but fails to teach applications that may relate to broadcast reception or any related event log in system. The absence of any teaching or suggestion, therefore, makes Leermakers an unsuitable reference to combine with Brown or Travaille.

Gessel Reference

The Gessel reference relates to telecommunication systems, more particularly to a network manager which provides advanced interconnection capability by dynamically allocating nodes in a telecommunications network. The telecommunications network of Gessel includes a plurality of nodes which communicate in a plurality of communication protocols. Gessel discloses a network manager that comprises means for connecting each of the plurality of nodes to the network manager and the means for disconnecting each of the plurality of nodes from the network manager. Gessel, however, fails to teach or suggest the use of any type of broadcast system that obtains data regarding customer use; any event logging; any transaction log as related to users; or any two-way interactive transmissions. Gessel, therefore again, demonstrates another non-analogous prior art reference that is being used to combine with Brown and Travaille and yet, with another divergent reference, Leermakers in order to achieve the subject matter of the present invention. Gessel fails to teach or suggest any combination with an event log in a broadcast environment and, in contrast, the teachings of Gessel relate to a telecommunications network. A further contrast to Leermakers, Gessel does not teach or suggest the use of any

Applicant: Footer et al.
Serial No.: 09/732,498
Page 11

downloading of software upon any type of computing device.

As stated above to avoid the hindsight syndrome associated with this rejection under 103(a), one must cast the mind back to the time of the invention to consider the thinking one of ordinary skill in the art, guided only the prior art references and the accepted wisdom in the field. See, In re Kotzab, 217 F.3d 1365, 1369, 55 U.S.P.Q.2d 1313, 1316 (Fed. Cir. 2000). Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one to fall victim to the insidious effect of hindsight syndrome. Id.

The present rejection demonstrates the use of the teachings of the claimed invention in order to pick and choose from isolated disclosures in the prior art. See, In re Fine, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). ("One cannot use hindsight reconstruction to pick and choose among isolated disclosures.") The only motivation to combine Brown, Travaille, Leermakers and Gessel comes from the present invention which is impermissible 103 analysis. See, Heidelberger Druckmaschinen AG v. Hantscho Commercial Products, Inc., 21 F.3d 1068, 1072, 30 U.S.P.Q.2d 1377, 1380 (Fed. Cir. 1993). As pointed out above in regard to Leermakers and Gessel, these references demonstrate the use of non-analogous art to support this rejection. The Federal Circuit has clearly held that the combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a prima facie case of obviousness. In re Oetiker, 977 F.2d 1443, 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992). Leermakers and Gessel both teach divergent subject matter such as software downloads onto PDAs as opposed to a

Applicant: Footer et al.
Serial No.: 09/732,498
Page 12

telecommunication network management. Anyone skilled in the art would not seek to combine Brown, Travaille, Leermakers and Gessel in order to achieve the subject matter of the present invention. The source of the motivation to combine must emit from the references themselves, absence any guidance from the present invention. Accordingly, this obviousness rejection must fail based upon the foregoing.

The above combination is used to reject dependent claims 2 through 11 and 13 and demonstrates a continued hindsight approach to this obviousness rejection. For example under claim 2, the Examiner cited to Brown for the additional features except the recited encapsulator which the Examiner states is disclosed in Gessel. So the Examiner essentially relies on the combination of an event logging system and a network management system, two non-analogous art references, to support the rejection of claim 2. Similarly, incongruent combinations of the recited prior art are used to selectively pick the recited elements while using the Appellant's invention as a road map as applied to the further independent claims. The references, as stated above, fail to teach or suggest the combination thereof to achieve the subject matter of the present invention.

B. Rejection of Claims 14-17 under 103 based on Brown, Travaille, Leermakers and Diwan
Claims 14-17 Argued as a Group

Claims 14 through 17 have been rejected under 103 based upon the combination of Brown, Travaille, Leermakers and Diwan. Diwan relates to an information distribution system where the system provides information to multiple subscribers. The system described in Diwan

Applicant: Footer et al.
Serial No.: 09/732,498
Page 13

receives requests for different types of information from the subscribers and stores rules for delivering the requested information. The Diwan system gathers information from multiple information sources, packages at least some of the gathered information in customized bundles according to the received request and stored rules, then delivers these customized bundles to subscribers. The Diwan system is described as used on networks such as the internet, intranet, a wide area network, a metropolitan network, local area network, or a public telephone network. The subscribers as described in Diwan include users that utilize personal computers, personal digital assistance (PDA's), laptops, mobile or portable telephones or similar communication devices. The information providers are described as servers, personal computers, laptops or similar computer devices and only mentioned the possibility of the broadcast of streams of information via news websites. Again, this combination of Brown, Travaille and Leermakers demonstrates two impermissible forms of analysis under 103. Diwan represents another non-analogous prior art reference that does not relate to, teach or suggest combinations with broadcast systems as described in Brown and Travaille. Leermakers remains problematic due to the shortcomings discussed above and demonstrates another non-analogous prior art reference.

Also, the combination of Brown, Travaille, Leermakers and Diwan fails to demonstrate any teaching or suggestion to combine these references to achieve the subject matter of the present invention. As discussed above in regard to claim 1, the Examiner in rejecting claim 14 relies on Brown for a number of the steps recited in the method set forth in claim 14. However, the Examiner notes that Brown fails to disclose the use of flash memory, communication servers for receiving callbacks, and user transactions that may include weather requests. Claim 14 also

Applicant: Footer et al.
Serial No.: 09/732,498
Page 14

recites other transactions that include gaming activity, weather requests, advertising viewed and banking transactions, all of which are retrieved from the data log stored in the flash memory of the IRD. The Examiner failed to provide any reference which disclosed the other transactions recited in claim 14. Regardless, the combination as an obviousness rejection fails due to the use of non-analogous prior art and the failure to teach or suggest a combination thereof.

The Examiner again relies upon Travaille for the teaching of a flash memory and then relies on Leermakers for disclosure of a broadcast satellite system that allows communications between user modems and other systems. The Examiner cites to Diwan for disclosure of a distribution system where a user may make a request for a weather report and said weather report will be transmitted to the user in response to the request. As stated above in regard to claim 1, in this rejection of claim 14 the Examiner again fails to show any teaching or suggestion within these references that would motivate one to combine these somewhat divergent prior art references in order to achieve the subject matter of the present invention.

C. Rejection of Claim 12 under 103 based on Brown, Travaille, Leermakers, Gessel and Hendricks

Claim 12 Argued Alone

Claim 12 has been rejected under 103 based upon the combination of Brown, Travaille, Leermakers, and Gessel as applied to claim 11 and in further view of the Hendricks reference. The Hendricks reference relates to a digital television program delivery system that provides subscribers with menu driven access to an expanded television program package. The Hendricks


Applicant: Footer et al.
Serial No.: 09/732,498
Page 15

reference describes a system that provides subscribers with a menu driven access scheme to an expanded television program lineup enabling subscribers to access and view selective programs using a user friendly interface. Claim 12 recites a dependent claim that essentially depends from claim 1 through claim 3 and 11. Claim 12 adds the additional feature of communication between the IDR and the central IDR via a satellite. The Examiner cites to Hendricks specifically for this satellite communication feature between an operation center and a cable headend. Here, the Examiner states that it would have been obvious to combine Brown, Travaille, Leermakers, Gessel and Hendricks in order to achieve the subject matter of claim 12. Although Hendricks presents a more analogous art reference than presented in reference to Leermakers and Gessel, it still must be taught that this combination of these prior art references are taught and suggested from within the references themselves. Also, nothing cures the insufficiencies related to the combination of Brown, Travaille, Leermakers and Gessel as discussed above. Accordingly, the combination of Brown, Travaille, Leermakers and Gessel cannot stand on its own as stated above and the addition of Hendricks does not provide any type of glue to hold all five of these prior references together to support this rejection.

Applicant: Footer et al.
Serial No.: 09/732,498
Page 16

Accordingly, Appellant respectfully submits that this 103 rejection fails for at least the same reasoning as set forth in regard to claim 1.

Respectfully submitted,



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December 8, 2005

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Applicant: Footer et al.
Serial No.: 09/732,498
Page 17

Appendix A - Claims

1. (Rejected) A system for obtaining data regarding customer use of interactive television, comprising:

at least one application server including at least one application program where the at least one application program is transmitted to users via at least one broadcast center;

a communications satellite, where the communications satellite receives transmissions from the at least one broadcast center;

a plurality of satellite dishes that receive the at least one application programs via the communications satellite, where each satellite dish transmits signals to a integrated receiver/decoder (IRD), where the IRD may transmit signals via a modem;

at least one graphic user interface (GUI) provided for each IRD, where the at least one GUI enables users to interact with and input data to the at least one application program, where the IRD includes callback functionality and flash memory;

a data log of user transactions and navigation activity, said data residing in the flash memory;

at least one communications server for receiving any callback functionality including data;

at least one interactive server where the at least one interactive server receives signals from the at least one communication server, wherein the at least one interactive server encapsulates the data into an appropriate protocol for transmission and each interactive server including a 333 MHz CPU or greater and 256 MB RAM or greater;

at least one interactive data repository (IDR) for storing data; and

a router in each interactive server, where each router includes a router application, said router application written in Unix C or Open TV.

2. (Rejected) The system of claim 1, wherein each interactive server comprises a

Applicant: Footer et al.
Serial No.: 09/732,498
Page 18

parser of the data in the data log and an encapsulator of data into appropriate protocol for database users, each interactive server transmitting data to the at least one IDR and each IDR stores parsed data.

3. (Rejected) The system of claim 1, wherein each IDR transmits data to an interactive business system ("IBS") wherein data in each IDR is correlated with data in the IBS.

4. (Rejected) The system of claim 1, wherein the at least one communication server includes a bank of modems.

5. (Rejected) The system of claim 1, wherein the router in each interactive server identifies a particular interactive television action by a code and routes the code to the appropriate IDR.

6. (Rejected) The system of claim 1, wherein the at least one application program is includes a banking application.

7. (Rejected) The system of claim 1, wherein the at least one application program provides data to the user.

8. (Rejected) The system of claim 1, wherein the at least one interactive server encapsulates the data regarding a particular interactive television action into TCP/IP protocol.

9. (Rejected) The system of claim 1, wherein each communication server, interactive server, and IDR are located at the same operating company.

10. (Rejected) The system of claim 3, wherein each communication server, interactive server, IDR and IBS are located at the same operating company.

11. (Rejected) The system of claim 3, wherein data in each IDR is communicated to a central IDR.

12. (Rejected) The system of claim 11, wherein communication between each IDR and the central IDR is performed by satellite.

Applicant: Footer et al.
Serial No.: 09/732,498
Page 19

13. (Rejected) The system of claim 3, wherein a code in the data downloaded from each IRD is compared with data in the IBS to allow identification of the user.

14. (Rejected) A method for obtaining data regarding a customer use of interactive television, comprising the steps of:

providing at least one application programs on application servers;

transmitting the at least one the application program to a broadcast center;

transmitting the at least one application program from the broadcast center to a communications satellite;

transmitting the application program from the communications satellite to a plurality of satellite dishes;

communicating the at least one application program from each satellite dish to at least one integrated receiver/decoders ("IRD");

enabling a user to input data into the at least one application program received by the IRD via a graphical user interface (GUI);

inputting data into a data log in flash memory in each IRD;

transmitting the data log via callback from each IRD to a communications server;

transmitting the data log from the communications server to an interactive server;

parsing user navigation and transaction data where the transactions include gaming activity, weather requests, advertising viewed and banking transactions from the data log; and

storing user navigation and transaction data in at least one interactive data repositories ("IDRs").

15. (Rejected) The method of claim 14, further comprising the steps of correlating the data in each IRD with data in an Interactive Business System ("IBS").

16. (Rejected) The method of claim 15, wherein communication of the data in each

Applicant: Footer et al.
Serial No.: 09/732,498
Page 20

IDR with the data in the IBS enables the operator of the IBS to identify the user associated with each IDR.

17. (Rejected) The method of claim 16, further comprising the step of communicating the data in each IDR with a central IDR.

18. (Cancelled)

19. (Cancelled)

20. (Cancelled)

21. (Cancelled)

22. (Cancelled)

23. (Cancelled)

24. (Cancelled)

Applicant: Footer et al.
Serial No.: 09/732,498
Page 21

Appendix B – Evidence

None

Appendix C – Related Proceedings

None